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GOVERNMENT OF GOA, DAMAN AND DIU

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Law Department (Legal Advice)

Notification

7/1/80-LGL

The following Criminal Law (Amendment) Bill, 1980 received from the Government of India, Ministry of Home Affairs, New Delhi is hereby republished for general information of the public.

R. V. Durbhatker, Under Secretary (Law).

Panaji, 17th November, 1980.

The Criminal Law (Amendment) Bill, 1980

A BILL

further to amend the Indian Penal Code, the Code of Criminal Procedure, 1973 and the Indian Evidence Act, 1872.

BE it enacted by Parliament in the Thirty-first Year of the Republic of India as follows:—

1. *Short title.*—This Act may be called the Criminal Law (Amendment) Act, 1980.

2. *Insertion of new section 228A.*—In the Indian Penal Code (hereinafter referred to as the Penal Code), after section 228, the following section shall be inserted, namely:—

“228A. *Disclosure of identity of the victim of certain offences, etc.*—(1) Whoever prints or publishes the name or any matter which may make known the identity of any person against whom an offence under section 354, section 376, section 376A, section 376B, or section 376C is alleged or found to have been committed shall be punished with imprisonment for a term which shall not be less than one month but which may

extend to two years and shall also be liable to fine:

Provided that the court may, for adequate and special reasons to be mentioned in the judgment, impose a sentence of imprisonment for a term of less than one month.

(2) Where, by any enactment for the time being in force, the printing or publication of,—

(a) the name, or any matter which may make known the identity, of any person against whom an offence specified in such enactment is alleged or found to have been committed,

(b) any matter in relation to a proceeding held in a court *in camera*,

is prohibited, any person who prints or publishes any such name or matter shall be punished with imprisonment for a term which shall not be less than one month but which may extend to two years and shall also be liable to fine:

Provided that the court may, for adequate and special reasons to be mentioned in the judgment, impose a sentence of imprisonment for a term of less than one month.

Explanation.—The printing or publication of the judgment of any High Court or the Supreme Court does not amount to an offence within the meaning of this section.”

3. *Substitution of new sections for sections 375 and 376.*—In the Penal Code, for the heading “Of rape” occurring immediately before section 375 and for sections 375 and 376, the following heading and sections shall be substituted, namely:—

‘Sexual offences

375. *Rape.*—A man is said to commit “rape” who, except in the case hereinafter excepted, has sexual intercourse with a woman under circumstances falling under any of the seven following descriptions:—

First.—Against her will.

Secondly.—Without her free and voluntary consent.

Thirdly.—With her consent, when her consent has been obtained by putting her in fear

of death or of hurt or of any injury or by criminal intimidation as defined in section 503.

Fourthly. — With her consent, when the man knows that he is not her husband, and that her consent is given because she believes that he is another man to whom she is or believes herself to be lawfully married.

Fifthly. — With her consent, when her consent is given under a misconception of fact, when the man knows or has reason to believe that the consent was given in consequence of such misconception.

Sixthly. — With her consent, when, at the time of giving such consent, by reason of unsoundness of mind or intoxication or the administration by him of any stupefying or unwholesome substance, she is unable to understand the nature and consequences of that to which she gives consent, or is unable to offer effective resistance.

Seventhly. — With or without her consent, when she is under sixteen years of age.

Explanation 1. — Penetration is sufficient to constitute the sexual intercourse necessary to the offence of rape.

Explanation 2. — A woman living separately from her husband under a decree of judicial separation shall be deemed not to be his wife for the purposes of this section.

Exception. — Sexual offence by a man with his own wife, the wife not being under fifteen years of age, is not rape.

376. Punishment for rape. — (1) Whoever, except in the cases provided for by sub-section (2), commits rape shall be punished with imprisonment of either description for a term which shall not be less than seven years but which may be for life or for a term which may extend to ten years and shall also be liable to fine:

Provided that the court may, for adequate and special reasons to be mentioned in the judgment, impose a sentence of imprisonment for a term of less than seven years.

(2) Whoever, —

(a) being a police officer, commits rape in the local area to which he is appointed, or in any police station whether or not situated in such local area; or

(b) being a public servant, takes advantage of his official position and commits rape on a woman in his custody as such public servant or in the custody of a public servant subordinate to him; or

(c) being the superintendent or manager of a jail, remand home or other place of custody established by or under any law for the time being in force or of a women's or children's institution takes advantage of his official posi-

tion and commits rape on any inmate of the institution; or

(d) being concerned with the management or being on the staff of a hospital, commits rape on a woman who is receiving treatment in that hospital; or

(e) commits rape on a woman knowing her to be pregnant; or

(f) commits gang rape,

shall be punished with rigorous imprisonment for a term which shall not be less than ten years but which may be for life and shall also be liable to fine:

Provided that the court may, for adequate and special reasons to be mentioned in the judgment, impose a sentence of imprisonment of either description for a term of less than ten years.

Explanation 1. — Where a woman is raped by three or more persons acting in furtherance of their common intention, each of the persons shall be deemed to have committed gang rape within the meaning of this sub-section.

Explanation 2. — "Superintendent" in relation to a jail, remand home or other place of custody or a women's or children's institution includes a person holding any other office in such institution by virtue of which he can exercise any authority or control over its inmates.

Explanation 3. — "Women's or children's institution" means an institution, whether called an orphanage or a home for neglected women or children or a widows' home or by any other name, which is established and maintained for the reception and care of women or children.

376A. Intercourse by public servant with woman in his custody. — Whoever, being a public servant, takes undue advantage of his official position and seduces any woman, who is in his custody as such public servant or in the custody of a public servant subordinate to him, to have sexual intercourse with him, such sexual intercourse not amounting to the offence of rape, shall be punished with imprisonment of either description for a term which may extend to five years, and shall also be liable to fine.

376B. Intercourse by superintendent of jail, remand home, etc. — Whoever, being the superintendent or manager of a jail, remand home or other place of custody established by or under any law for the time being in force or of a women's or children's institution or holding any other office in such institution by virtue of which he can exercise any authority or control over its inmates, takes undue advantage of his official position and seduces any female inmate of such jail, remand home, place or institution to have sexual intercourse with him, such sexual intercourse not amounting to the offence of rape, shall be punished with imprisonment of either description for a term which may extend to five years, and shall also be liable to fine.

Explanation.—The expressions “superintendent” and “women’s or children’s institution” shall have the same meanings as in *Explanations 2 and 3* of sub-section (2) of section 376.

376C. Intercourse by manager, etc., of a hospital with patient.—Whoever, being concerned with the management of a hospital or being on the staff of a hospital, has sexual intercourse with a woman who is receiving treatment in that hospital, such sexual intercourse not amounting to the offence of rape, shall be punished with imprisonment of either description for a term which may extend to five years, and shall also be liable to fine.

Explanation.—“Hospital” includes any institution for the reception and treatment of persons suffering from illness, or for the reception and treatment of persons during convalescence or of persons requiring medical attention or rehabilitation.

4. Amendment of section 327.—In the Code of Criminal Procedure, 1973 (hereinafter referred to as the Criminal Procedure Code), section 327 shall be numbered as sub-section (1) of that section and —

(a) in sub-section (1) as so numbered, the following proviso and *Explanation* shall be inserted at the end, namely:—

‘Provided further that the inquiry into and trial of rape or allied offence shall be conducted *in camera*.

Explanation.—In this sub-section, the expression “rape or allied offence” denotes —

(a) an offence punishable under section 354 of the Indian Penal Code; 45 of 1860.

(b) an offence punishable under section 376, section 376A, section 376B, or section 376C of that Code;

(c) an attempt to commit, abetment of or conspiracy to commit any such offence as is mentioned in clause (a) or clause (b) of this *Explanation*;

(b) after sub-section (1) as so numbered, the following sub-section shall be inserted, namely:—

“(2) Where any proceedings are held *in camera*, it shall not be lawful for any person to print or publish any matter in relation to any such proceeding except with the previous permission of the court.”

5. Insertion of new section 350A.—In the Criminal Procedure Code, after section 350, the following section shall be inserted, namely:—

“350A. Summary procedure for punishment for printing or publication of proceedings *in camera*. — (1) Where any such offence as is described in sub-

section (2) of section 228A of the Indian Penal Code is committed in relation to the proceedings of any Court, such Court may, if satisfied that it is expedient in the interests of justice that such offence should be tried summarily, take cognizance of the offence and after giving the offender an opportunity of showing cause why he should not be punished under this section, sentence him to imprisonment which may extend to three months and also to fine.

(2) In every such case, the Court shall follow as nearly as may be practicable the procedure prescribed for summary trials.”

6. Amendment of section 351.—In section 351 of the Criminal Procedure Code, in sub-section (1), for the words and figures “or section 350”, the words, figures and letter “section 350, or section 350A” shall be substituted.

7. Amendment of the First Schedule.—In the First Schedule to the Criminal Procedure Code, under the heading “I. — Offences under the Indian Penal Code”, —

(a) after the entries relating to section 228, the following entries shall be inserted, namely:—

1	2	3	4	5	6
“228A	Disclosure of the identity of the victim of certain offences, etc.	Imprisonment for two years or fine or both.	Cognizable	Non-bailable	Any Magistrate.
	Printing or publication of a proceeding, held <i>in camera</i> , in contravention of any law.	Ditto	Ditto	Ditto	Ditto.”;

(b) for the entries relating to section 376, the following entries shall be substituted, namely:—

1	2	3	4	5	6
“376	Rape	Imprisonment for life or imprisonment for ten years and fine.	Cognizable	Non-bailable	Court of Session.

1	2	3	4	5	6
376A	Intercourse by public servant with woman in his custody.	Imprisonment for five years and fine.	Ditto	Ditto	Magistrate of the first class.
376B	Intercourse by superintendent of jail, remand home, etc.	Ditto	Ditto	Ditto	Ditto.
376C	Intercourse by manager, etc., of a hospital with patient.	Ditto	Ditto	Ditto	Ditto."

8. *Insertion of new section 111A in Act 1 of 1872.*—After section 111 of the Indian Evidence Act, 1872, the following section shall be inserted, namely:—

"111A. *Presumption as to absence of consent in certain prosecutions for rape.*—In a prosecution for rape under clause (a) or clause (b) or clause (c) or clause (d) or clause (f) of sub-section (2) of section 376 of the Indian Penal Code, where sexual intercourse is proved and the question is whether it was without the consent of the woman alleged to have been raped and she states in her evidence before the Court that she did not consent, the Court shall presume that she did not consent."

STATEMENT OF OBJECTS AND REASONS

There have been pressing demands inside and outside Parliament for the amendment of the law relating to rape so that it becomes more difficult for the offenders to escape conviction and severe penalties are imposed on those convicted. A petition was also presented to Lok Sabha on the subject suggesting *inter alia*, *in camera* trial of rape cases and certain changes in the law of evidence especially in the matter of shifting the onus of proving consent of the victim to the accused if the latter were a policeman and it was proved that while on duty he had had sexual intercourse with the prosecutrix. The Law Commission which was requested to study the subject has made recommendations for changes in the Indian Penal Code, the Code of Criminal Procedure and the Indian Evidence Act in its 84th Report.

2. The recommendations of the Law Commission have been examined in consultation with the State Governments. Various suggestions on the subject have also been received. In the light of the consultation with the State Governments and the suggestions which have been received, it is proposed to make suitable changes in the Indian Penal Code, the Code of Criminal Procedure and the Indian

Evidence Act with respect mainly to the offence of rape. The changes proposed in the Bill have been formulated principally on the basis of the following considerations:—

(1) the law should be made more stringent without jeopardising considerations of fair trial;

(2) the definition of rape should be amended to remove certain loopholes and inadequacies and to ensure that consent should be vitiated unless it is real and given out of free choice;

(3) minimum punishments for rape should be prescribed;

(4) the prosecutrix should be protected from the glare of embarrassing publicity during the investigatory as well as trial stages and any information leading to identification of the victim should not be disclosed;

(5) in the case of rape by a police officer or by a group of persons or by a person having a custodial control by virtue of his special position over the victim, once it is proved that sexual intercourse has taken place, the onus should be on the accused to prove that the sexual intercourse was with the consent of the woman.

3. The Bill seeks to achieve the above objects.

New Delhi;

ZAIL SINGH.

The 11th August, 1980.

ANNEXURE

Extracts from the Indian Penal Code, 1860
(45 of 1860)

Of rape

375. *Rape.*—A man is said to commit "rape" who except in the case hereinafter excepted, has sexual intercourse with a woman under circumstances falling under any of the five following descriptions:—

First.—Against her will.

Secondly.—Without her consent.

Thirdly.—With her consent, when her consent has been obtained by putting her in fear of death, or of hurt.

Fourthly.—With her consent, when the man knows that he is not her husband, and that her consent is given because she believes that he is another man to whom she is or believes herself to be lawfully married.

Fifthly.—With or without her consent, when she is under sixteen years of age.

Explanation.—Penetration is sufficient to constitute the sexual intercourse necessary to the offence of rape.

Exception.—Sexual intercourse by a man with his own wife, the wife not being under fifteen years of age, is not rape.

376. *Punishment for rape.*—Whoever commits rape shall be punished with imprisonment for life, or with imprisonment of either description for a term which may extend to ten years, and shall also be liable to fine, unless the woman raped is his own wife and is not under twelve years of age, in which case he shall be punished with imprisonment of either description for a term which may extend to two years, or with fine, or with both.

Extracts from the Code of Criminal Procedure, 1973
(2 of 1974)

327. *Court to be open.*—The place in which any Criminal Court is held for the purpose of inquiring into or trying any offence shall be deemed to be an open Court, to which the public generally may have access, so far as the same can conveniently contain them:

Provided that the presiding Judge or Magistrate may, if he thinks fit, order at any stage of any inquiry into, or trial of, any particular case, that the public generally, or any particular person, shall not have access to, or be or remain in, the room or building used by the Court.

351. *Appeals from convictions under sections 344, 345, 349 and 350.*—(1) Any person sentenced by

any Court other than a High Court under section 344, section 345, section 349, or section 350 may, notwithstanding anything contained in this Code appeal to the Court to which decrees or orders made in such Court are ordinarily appealable.

THE FIRST SCHEDULE

CLASSIFICATION OF OFFENCES

I. — Offences under the Indian Penal Code

376 Rape					
If the sexual intercourse was by a man with his own wife under 12 years of age.	Imprisonment for 2 years, or fine, or both.	Non-cognizable	Bailable	Court of Session.	
If the sexual intercourse was by a man with his own wife being under 12 years of age.	Imprisonment for life, or imprisonment for 10 years and fine.	Ditto	Ditto	Ditto	
In any other case	Ditto	Cognizable	Non-bailable	Ditto	